

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

KENNETH EUGENE STRODER III,

Plaintiff,

v.

BRIAN LONG,

Defendant.

CAUSE NO. 3:19-CV-152-RLM-MGG

OPINION AND ORDER

Kenneth Eugene Stroder III, a prisoner without a lawyer, filed a request to reopen this case. Based on the timing of this request, the court construes it as a request pursuant to Federal Rule of Civil Procedure 60, which authorizes the court to relieve a party from a final judgment based on: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; or . . . (6) any other reason that justifies relief.” Fed. R. Civ. P. 60(b). “A motion under Rule 60(b) must be made within a reasonable time.” Fed. R. Civ. P. 60(c)(1).

Mr. Stroder filed a complaint n March 4, 2019 in which he informed the court that his address was the address of the St. Joseph County Jail and agreed to promptly notify the court of any change of address. ECF 1. On March 12, 2020, the court received notice that an order mailed to Mr. Stroder was returned as undeliverable and that he was no longer in the custody of the St. Joseph

County Jail. ECF 39. On April 9, the court gave him until May 11 to show cause as to why he didn't promptly notify the court of his change of address. ECF 40. The court cautioned him that, if he didn't do so, the case could be dismissed without further notice. Id. On May 26, the court dismissed the case for abandonment. ECF 42.

Seven months later, Mr. Stroder filed this request representing that he has been at the Elkhart Community Corrections Center since May 4, 2020, and that he received no information about case until January 7, 2021. Mr. Stroder doesn't explain why he didn't promptly notify the court of his change of address or seek any status updates after he left the St. Joseph County Jail in or before March 2020. The extended lack of communication with the court confirms the finding in the dismissal order that he abandoned the case. He also explains that he didn't have sufficient funds to pay the filing fee, but it's unclear how this prevented him from participating in this case. The court didn't order Mr. Stroder to pay the filing fee immediately but instead ordered that he pay installments as funds were deposited into his jail account and allowed the case to proceed. ECF 3, ECF 5. The court can't find on this record that Mr. Stroder has demonstrated excusable neglect, and the request to reopen this case is denied.

For these reasons, the court DENIES the request to reopen (ECF 46).

SO ORDERED on January 15, 2021

s/ Robert L. Miller, Jr. _____
JUDGE
UNITED STATES DISTRICT COURT